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The Honorable Robert S. Lasnik

AUG 30 2006

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
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BY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GARY GERBER, on behalf of himself and
others similarly situated,

Plaintiff,

v.

FIRST HORIZON HOME LOANS
CORPORATION,

Defendant.

CLASS ACTION

No. C05-1554 RSL



05-CV-01554-ORD

TODD SQUIRE, VICTOR and MA. TERESA
PINEDA, husband and wife, and RICHARD
WAYMAN, on behalf of themselves and others
similarly situated,

Plaintiffs,

v.

FIRST HORIZON HOME LOANS
CORPORATION,

Defendant.

CLASS ACTION

No. C 06-0699 RSL

STIPULATION AND ~~PROPOSED~~
ORDER CONSOLIDATING CIVIL
ACTION NO. 05-1554 AND CIVIL
ACTION NO. 06-0699

Pursuant to Fed. R. Civ. P. 42(a), and subject to the terms and conditions set forth
below, Plaintiffs and Defendant in above-captioned actions hereby enter into this Stipulation
and Proposed Order:

STIPULATION AND ~~PROPOSED~~ ORDER
CONSOLIDATING CIVIL ACTION NO. 05-
1554 AND CIVIL ACTION NO. 06-0699- 1

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98104-1158
TELEPHONE: (206) 447-4400

I. STIPULATION

1. The above-captioned actions - *Gerber v. First Horizon Home Loans Corporation*, Civil Action No. 05-1554 ("Gerber") and *Squire et al. v. First Horizon Home Loans Corporation*, Civil Action No. 06-0699 ("Squire") (collectively, the "Actions") - are putative class actions currently pending against First Horizon Home Loan Corporation ("First Horizon") in this Court.

2. *Gerber* was filed in the Superior Court of King, County Washington on or about August 4, 2005, and removed to this Court on or about September 9, 2005.

3. *Squire* was filed in this Court on or about May 17, 2006.

4. In both Actions, Plaintiffs purport to challenge, on behalf of themselves and putative nationwide and statewide classes of allegedly similarly situated borrowers, a fee - known as a "priority fee" - charged by First Horizon in connection with their home loans.¹ In *Squire*, plaintiff Todd Squire purports to challenge, on behalf of himself and putative and statewide classes, a second fee - known as a "recording fee" - charged in connection with his home loan. The recording fee is not at issue in *Gerber*. Plaintiffs allege that the charging of these fees gives rise to claims for breach of contract, unjust enrichment, and violation of the Washington Consumer Protection Act ("WCPA").

5. The Actions will thus involve (a) litigation of common legal issues (e.g., whether the charging of the subject priority fee constitutes a breach of contract, unjust enrichment or a violation of the WCPA, and whether Plaintiffs' priority fee claims meet the

¹ First Horizon denies that class certification is required or appropriate in the Actions, and reserves all rights to oppose class certification. Plaintiffs and First Horizon stipulate and agree that nothing in this Stipulation shall be deemed and/or construed to constitute a waiver or other limitation of First Horizon's right to oppose class certification on any grounds.

1
2 prerequisites to class certification under Fed. R. Civ. P. 23),² and (b) overlapping discovery
3 concerning Plaintiffs' priority fee claims. For these reasons, Plaintiff and First Horizon agree
4 that the Actions should proceed on a common schedule – i.e., the schedule to be entered by
5 this Court following submission of the parties' forthcoming Joint Status Report & Discovery
6 Plan in *Squire*, which is due to be filed on August 31, 2006 – through litigation and resolution
7 of the class certification question. See *Squire*, No. C 06-699-RSL “Order Regarding Initial
8 Disclosures, Joint Status Report, and Early Settlement” (July 20, 2006). Placing *Gerber* on
9 the same schedule as *Squire* will, among other things, allow for common (as opposed to
10 separate) discovery and class certification briefing in the Actions. The parties agree that
11 discovery in *Gerber* may continue apace.
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14 6. Fed. Civ. P. 41(a) provides this Court may consolidate actions “involving
15 common questions of law or fact,” and/or “make such orders concerning the proceedings
16 therein as may tend to avoid unnecessary costs or delay.” Fed. R. Civ. P. 41(a).

17 7. The consolidation of the Actions through litigation and resolution of the issue
18 of class certification will serve the interests of justice, conserve this Court's and the parties'
19 resources, achieve considerable efficiencies, and avoid inconsistent results.
20

21 It is, therefore, STIPULATED AND AGREED, by and between the undersigned, the
22 attorneys of record for Plaintiffs and First Horizon in the above-entitled actions, that (a) the

23
24 ² While First Horizon acknowledges that the Actions involve common legal issues for
25 purposes of a Rule 42(a) consolidation analysis, it maintains that no class can be certified in
26 *Gerber* and/or *Squire* because, among other reasons, the putative class claims implicate
individual questions of law and fact that will predominate over any questions common to the
putative class members. Fed. R. Civ. P. 23(b)(3).

1 Actions may be consolidated through litigation and resolution of the issue of class
2 certification; (b) the litigation of Actions through resolution of the class certification issue
3 shall proceed upon the schedule to be entered by this Court following submission of the
4 parties' Joint Status Report & Discovery Plan in *Squire*; (c) the May 2, 2006 scheduling order
5 in *Gerber* may be vacated (*see Geber*, "*Minute Order Setting Trial Date & Related Dates*"
6 (May 2, 2006)); (d) the Parties will inform the Court as to their respective positions
7 concerning whether the Actions should remain consolidated following resolution of the class
8 certification issue;³ (e) *Squire* shall not "relate back" to the date of the filing of *Gerber* for any
9 purpose, including, without limitation, determining any tolling period or statute of limitations
10 defense; and (f) the claim(s) of any Plaintiff or putative class member time barred under any
11 applicable statutes of limitation as of the date of the filing of *Squire* shall remain time barred
12 without regard to *Gerber* or the August 4, 2005 date of *Gerber*'s filing.
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25 ³ In the event the parties do not agree on whether continued consolidation of the Actions
26 is appropriate following resolution of the certification issue, the parties will, by appropriate
motion or application, submit the matter to the Court for determination.

1 DATED this 21st day of August, 2006:

2
3 FOSTER PEPPER PLLC

WILLIAMSON & WILLIAMS

4 /s/ Tim J. Filer

/s/ Rob Williamson

5 Tim J. Filer, WSBA No. 16285

Rob Williamson, WSBA No. 11387

6 Jeffrey S. Miller, WSBA No. 28077

7 Neil A. Dial, WSBA No. 29599

Guy W. Beckett, Esq.

Beckett Law Offices, PLLC

811 First Avenue, Suite 620

Seattle, WA 98104

Ph: 206-264-8135

8 Thomas M. Hefferon, Esq. (*pro hac vice*)

9 GOODWIN PROCTER LLP

901 New York Avenue, N.W.

Washington, D.C. 20001

(202) 346-4000

Mark A. Griffin, Esq.

Keller Rohrback L.L.P.

1201 Third Ave., Suite 3200

Seattle, WA 98101

Ph: 206-623-1900

10 Brooks R. Brown, Esq. (*pro hac vice*)

11 Jennifer W. Fischesser, Esq. (*pro hac vice*)

GOODWIN PROCTER LLP

Exchange Place

12 Boston, MA 02109-2188

(617) 570-1000

13 Attorneys for Defendant

14 First Horizon Home Loan Corporation

Attorneys for Plaintiff Gary Gerber and

Plaintiffs Squire, Pineda and Wayman

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STIPULATION AND ~~PROPOSED~~ ORDER
CONSOLIDATING CIVIL ACTION NO. 05-
1554 AND CIVIL ACTION NO. 06-0699- 5

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2 **II. ORDER**

3 This matter having come before the Court on the stipulation and joint request of the
4 parties and good cause having been shown,

5 IT IS SO ORDERED. All documents hereafter filed in these causes shall be filed and
6 docketed under Case No. C05-1554RSL.
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9 DATED this 29th day of August, 2006.

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12 _____
13 Honorable Robert S. Lasnik
14 United States District Judge

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STIPULATION AND ~~PROPOSED~~ ORDER
CONSOLIDATING CIVIL ACTION NO. 05-
1554 AND CIVIL ACTION NO. 06-0699- 6

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